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Thirtieth meeting of Chairs of the human rights treaty bodies
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Follow-up to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system

Identifying progress achieved in aligning the working methods and practices of the treaty bodies

Note by the Secretariat

Summary

At their twenty-ninth meeting, the Chairs of the human rights treaty bodies requested that the Office of the United Nations High Commissioner for Human Rights prepare a document for discussion before their thirtieth meeting, identifying the progress made in aligning the working methods and practices of the treaty bodies in various areas addressed in General Assembly resolution 68/268, as well as those areas identified on which the Chairs will continue to work towards enhanced alignment.

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I. Introduction

1. At their twenty-ninth annual meeting, in 2017, while recognizing the specificity of the various treaty bodies' practices that is based on their respective treaties and mandates, the Chairs requested the secretariat of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a document for discussion at their thirtieth annual meeting, identifying the progress made in aligning the working methods and practices of the treaty bodies in various areas addressed in General Assembly resolution 68/268, as well as those areas identified by the Chairs to further enhance the alignment of working methods.[1]

2. Regarding follow-up to concluding observations and Views, reference is made to the separate document HRI/MC/2018/4, which will also be the subject of discussion at the thirtieth annual meeting of the Chairs.

3. The present note is a comparative review of the treaty bodies' rules of procedure and working methods, carried out between October and December 2017. The review was conducted by an external consultant[2] and was desk-based, drawing on documents and information publicly available on the OHCHR website.

II. Simplified reporting procedure

4. The General Assembly in its resolution 68/268 encourages treaty bodies to offer the simplified reporting procedure to States parties for their consideration and to set a limit on the number of questions (in the list of issues prior to reporting) (para. 1). The General Assembly in the same resolution also encourages States parties to consider the possibility of using the simplified reporting procedure (para. 2).

5. The simplified reporting procedure consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective reports. The procedure is meant to assist States parties in preparing and submitting more focused reports. All of the core human rights treaty bodies offer the simplified reporting procedure, except for the Committee on Enforced Disappearances, which does not have a periodic reporting procedure, and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which does not have a reporting procedure at all.

6. The Committee against Torture initiated the simplified reporting procedure in 2007 under the name "list of issues prior to reporting", and it offers it now to all States parties, including those with long-overdue initial reports. The Human Rights Committee started offering the procedure in 2009, followed by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2011, the Committee on the Rights of Persons with Disabilities in 2013, the Committee on the Elimination of Discrimination against Women in 2013[3] and the Committee on the Elimination of Racial Discrimination in 2015. The Committee on Economic, Social and Cultural Rights offered the simplified reporting procedure to a limited number of States on a pilot basis, in 2015.[4] The Committee on the Rights of the Child has started offering the simplified reporting procedure as of 2018.

7. The Committee on the Elimination of Racial Discrimination is implementing the simplified reporting procedure gradually, by offering it to the States parties whose periodic reports are more than five years overdue and by prioritizing those that are more than 10

[1] A/72/177, para. 26.

[2] OHCHR acknowledges the work of Caroline Dommen.

[3] The Committee on the Elimination of Discrimination against Women suspended the simplified reporting procedure in 2014 in order to assess its impact.

[4] E/2015/22-E/C.12/2014/3.

years overdue. The Committee on Economic, Social and Cultural Rights has offered the simplified reporting procedure on a pilot basis to a number of States from their third periodic report onwards, and some will be considered in 2018. The Committee on the Elimination of Discrimination against Women offers the simplified reporting procedure on a pilot basis for periodic reports that are overdue, on the condition that a common core document has been submitted in the past five years, or less in cases where there have been significant political and/or socioeconomic changes. As regards initial reports, the Committee against Torture offers the simplified reporting procedure when the reports are long overdue, bearing in mind the Secretariat's capacity (two States per year). The Committee on the Rights of the Child has made the simplified reporting procedure available to States parties whose periodic reports are due from 1 September 2019 onwards, through quarterly invitations. The Committee on Migrant Workers may use the simplified reporting procedure for overdue initial reports, regardless of whether the State party has accepted the procedure or not, and may proceed to review a State party in the absence of a report.

8. Some of the modalities of the simplified reporting procedure in the various treaty bodies are described in the table below.

Treaty body	*Offers the simplified reporting procedure for initial reports*	*Offers the simplified reporting procedure for periodic reports*	*Offers the simplified reporting procedure (for periodic reports), with certain limitations modalities*	*Number of States parties informed of the availability of the simplified reporting procedure as at 31 December 2017*	*Number of States parties that had availed themselves of the simplified reporting procedure after having been invited, as at 31 December 2017*
Committee on the Elimination of Racial Discrimination	No	Yes	Yes	44	6
Human Rights Committee	No	Yes	No	146	43
Committee on Economic, Social and Cultural Rights	No	Yes	Yes	9	3
Committee on the Elimination of Discrimination against Women	No	Yes	Yes	189	7
Committee against Torture	Yes	Yes	No	130	96
Committee on the Rights of the Child	No	Yes	Yes	27	3
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	Yes	Yes	No	51	14
Committee on the Rights of Persons with Disabilities	No	Yes	No	61	31
Committee on Enforced Disappearances	No	-	-	-	-
Subcommittee on Prevention of Torture	-	-	-	-	-
Total	**2**	**8**	**4**	**657**	**203**

9. The Chairs could discuss the merits of the simplified reporting procedure, and consider aligning their working methods on this issue.

III. Constructive dialogue with States parties

10. The General Assembly in its resolution 68/268 encourages the treaty bodies to align their methodology for their constructive dialogue with the States parties, with the aim of making the dialogue more effective, maximizing the use of the time available and allowing for a more interactive and productive dialogue with States parties (para. 5).

11. Once a report is submitted under the regular procedure, treaty bodies hold a preliminary review of the report to determine any additional information that they may need to request from the State party. Treaty bodies appoint country rapporteurs or a country task force to draft the list of issues on any given State party's report. The list of issues indicates to the State party any information that may have been omitted from the report, that may be outdated or that members consider necessary for an assessment of the state of implementation of the treaty in the country concerned. It provides the State party with advance notice of issues of concern to the treaty body and allows the delegation to be prepared for the dialogue. Most treaty bodies structure their dialogues around the list of issues or list of themes.[5]

12. Broadly, the current situation is similar to that set out by the Secretariat in 2014 and 2015 in notes on the constructive dialogue between treaty bodies and States parties.[6]

13. The Chairs might wish to reiterate the content of the guidance note on the constructive dialogue which they adopted in 2014[7] and which has since been endorsed by some but not all treaty bodies, and make it available to States parties.

Consideration of a State in the absence of a report

14. Most States do not comply with deadlines for the submission of their reports under the treaty bodies. Some treaty bodies examine States parties in the absence of a report. The Convention on the Rights of Persons with Disabilities is the only human rights treaty that provides for the committee to consider the situation in a State party in the absence of a report (art. 36).

15. Some treaty bodies address this matter through their rules of procedure; others do so in their working methods. The rules of procedure of the Committee against Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances set out, with varying levels of detail, whether, and under what conditions, they will consider the human rights situation in a State party that has not submitted a report.

16. The rules of procedure of the Committee on Migrant Workers and the Committee on the Rights of Persons with Disabilities specify that the committee will invite the State party to take part in the relevant session and engage in the dialogue. The Committee on Migrant Workers adds that it may proceed to examine the implementation of the relevant convention even in the absence of a delegation of the State party.

17. The working methods of the Human Rights Committee refer to consideration of States parties in the absence of a report and how the Committee will proceed. The Committee on Enforced Disappearances details its approach both in its rules of procedure and its working methods, with the latter providing more details, including that the State party's delegation will be invited but that the Committee may examine the situation even in the absence of a delegation. The working methods of the Committee on the Elimination of Racial Discrimination note that the Committee has adopted special procedures for considering the situation of States parties that have not submitted even an initial report, or whose reports are considerably overdue but do not indicate what those special procedures

[5] OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part 1 — Manual* (2017), p. 51.

[6] HRI/MC/2014/3; and HRI/MC/2015/2, paras. 17–26.

[7] A/69/285, annex I.

are. The working methods of the Committee on the Elimination of Discrimination against Women indicate that the Committee does not consider the implementation of the relevant convention in a State party in the absence of a report, however in 2004 it decided that, in principle, it would consider a State party in the absence of a report, but only as a measure of last resort and in the presence of a delegation.

18. The Chairs could discuss whether to consider States in the absence of a report and consider aligning their practices on this issue.

IV. Adoption of more focused, targeted and implementable concluding observations

19. The General Assembly in its resolution 68/268 encourages the treaty bodies to ensure that concluding observations are short, focused and concrete (para. 6).

20. The nine treaty bodies that consider State party reports issue concluding observations.[8] The Subcommittee on Prevention of Torture does not consider State reports but issues reports on its country visits to the State party visited and/or to the national preventive mechanism of the State party, containing recommendations similar to those of concluding observations. The main objective of concluding observations is to identify a State party's achievements, challenges and opportunities related to the realization of human rights as defined in each treaty, and to assist in addressing the challenges by providing recommendations for action.[9]

21. Concluding observations have varied in length, format and content among the treaty bodies, and such differences are discussed below.

Nature and adoption of concluding observations

22. The treaty bodies' rules of procedure differ, but none provides much detail on the process for adopting, or on the content of, concluding observations. The rules of procedure of the Committee on Economic, Social and Cultural Rights indicate that the Committee shall make suggestions and recommendations of a general nature on the basis of its consideration of reports submitted by States parties. Similarly, those of the Committee on the Elimination of Racial Discrimination provide that if, on the basis of its examination of the reports and information supplied by the State party, the Committee determines that some of the obligations of that State under the Convention have not been discharged, it may make suggestions and general recommendations. The rules of procedure of the Committee on the Elimination of Discrimination against Women indicate that the Committee may, after consideration of the report of a State party, make concluding comments on the report with a view to assisting the State party in implementing its obligations under the Convention. The Committee may include guidance on the issues on which the next periodic report of the State party should be focused. The rules of procedure of the Committee on Enforced Disappearances explicitly state that the Committee shall issue comments, observations or recommendations on States parties' reports and other information, and refer to these as the concluding observations.

23. The rules of procedure of the Committee on Enforced Disappearances give some indication about how the concluding observations will be adopted and made public. In common with the other treaty bodies, that Committee's working methods further detail the process for the preparation and adoption of the concluding observations. These specify that concluding observations are discussed and adopted in a closed plenary meeting by the Committee following the examination of the State party's report.

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[8] The human rights treaties and their rules of procedure use various terms to refer to these, including concluding comments, observations, suggestions and recommendations. Concluding observations is now the generic term that all treaty bodies use.

[9] HRI/MC/2014/2.

24. The other treaty bodies' working methods vary slightly in their description of how the concluding observations will be prepared and adopted, but they share common features. Usually, the committee's country rapporteur prepares draft concluding observations, which the committee discusses and adopts in closed session. Some committees' working methods provide more detail: those of the Committee on the Rights of the Child indicate that the Committee generally devotes between two and three hours towards the end of the session, in private, to its discussion of each set of concluding observations. Some committees' working methods specify when and how the concluding observations are shared with the State party, and when they are made public. The working methods of the Committee on the Rights of the Child specify that after discussion with the State party, the Committee will, in closed meeting, agree on written concluding observations which include suggestions and recommendations. Concluding observations are adopted on the last day of the session, then on the following Monday an "advance courtesy copy" is sent for verification of factual comments to the relevant State party, which has 24 hours to respond. The concluding observations are then made public, normally after a press conference.

25. Given that all treaty bodies share broadly the same approach to the process of adopting concluding observations, the Chairs could discuss this as a priority area for aligning their working methods.

Structure and content of concluding observations

26. The General Assembly in its resolution 68/268 encourages the treaty bodies to reflect the dialogue with the State party in their concluding observations (para. 6).

27. The treaty bodies' rules of procedure do not specify what the content of the concluding observations should be, nor their structure, but most of their working methods do describe in a general way their content and/or structure.

28. The working methods of the Committee against Torture, similarly to those of other treaty bodies, state that concluding observations "follow a standard format which consists of a brief introduction, followed by a section noting positive aspects and another with the subjects of concern and related recommendations. The Committee also identifies certain issues to be followed up and the State party is requested to provide additional information in respect of these issues within one year."

29. A note by the Secretariat, discussed by Chairs in 2014, detailed differences and similarities between different treaty bodies' concluding observations.[10] It itemized the benefits of short, focused and concrete concluding observations, suggested common guidelines on concluding observations on the basis of existing good practices, and put forward a draft aligned format.[11] The Chairs endorsed a framework for concluding observations, and underscored that treaty bodies should retain the discretion to adapt the framework so as to reflect the specificities of each treaty.[12]

30. Seven of the nine treaty bodies include matters raised during the oral constructive dialogue in their concluding observations. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child include elements that were not raised orally but were included in the written material from the State.

31. To various degrees, all treaty bodies take into account their previous concerns and recommendations as the basis for the next concluding observations. All treaty bodies strive to formulate specific and concrete recommendations as much as possible. Most treaty bodies specify the articles of the treaty requiring action by a State party. The majority of treaty bodies have eliminated the section on factors and difficulties affecting treaty implementation.

[10] HRI/MC/2014/2.

[11] Ibid., annex.

[12] A/69/285, para. 54 and annex II.

32. In 2014, the Committee on the Rights of the Child decided to follow the format for concluding observations proposed by the treaty body Chairs at their 2014 meeting.[13] The Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women have adopted the concluding observations framework recommended by the treaty body Chairs, with the latter having done so on the understanding that the Committee's practice is that only issues discussed during the constructive dialogue with the State party concerned may be raised in the concluding observations.[14] The Committee on Economic, Social and Cultural Rights and the Committee on Migrant Workers have also endorsed the framework, albeit with reservations on the part of some of the members of the Committee on Economic, Social and Cultural Rights.[15] The Committee on Migrant Workers noted that its practice largely conformed to the guidelines.[16]

33. A number of treaty bodies' concluding observations exceed the 3,300-word limit suggested by the High Commissioner in 2012.[17] The Committee against Torture generally adheres to a limit of 5,000 words for its concluding observations. In 2017, concluding observations of the Committee on Economic, Social and Cultural Rights often exceeded 5,000 words, and those of the Committee on the Elimination of Discrimination against Women continued to be longer than 6,000 words, despite the latter Committee's 2015 decision to limit them to a maximum of 6,000 words.[18] Meanwhile, the concluding observations of the Committee on the Rights of the Child are becoming more succinct. In 2017 the average length was around 6,500 words, down from an average of over 9,000 in 2014, fulfilling the objective set by that Committee that year.[19]

34. The Chairs could discuss effective ways and means to ensure alignment regarding the structure, length and content of concluding observations.

V. Methodology for the consultation process for the elaboration of general comments

35. The General Assembly in its resolution 68/268 encourages the treaty bodies to develop an aligned consultation process for the elaboration of general comments that provides for consultation with States parties and takes account of the views of other stakeholders (para. 14).

36. Treaty bodies adopt authoritative guidance on the provisions of the treaty they monitor in the form of general comments or general recommendations.[20] General comments constitute detailed and comprehensive commentaries on specific treaty provisions or on the relationship between treaty provisions and specific themes.

37. To date, 8 out of the 10 treaty bodies have adopted general comments. The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture mention in their rules of procedure that the committee may adopt general comments, noting the purpose of the general comments. The rules of procedure of the Committee on Enforced Disappearances also indicate that a range of stakeholders may be consulted on a draft before the adoption of a general comment.

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[13] A/71/41.

[14] Committee on the Elimination of Discrimination against Women, decision 60/7, and A/71/18, para. 57.

[15] E/2016/22-E/C.12/2015/3, para. 75.

[16] A/70/48, para. 33.

[17] See www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf.

[18] Decision 62/4.

[19] A/71/41.

[20] The Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination still use the term "general recommendation". The present report will use the term "general comment".

38. Most committees set out the purpose and structure of general comments, or aspects of the process for their formulation, in their working methods. This is the case for the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities (purpose and process) and the Committee on Economic, Social and Cultural Rights (structure). But none of these go into much detail about how consultations with stakeholders will take place; information is scattered through a range of documents and not easily available.

39. In 2015, at their twenty-seventh meeting, the treaty body Chairs endorsed a common methodology for consultation and recommended it for generalization among all treaty bodies in the preparation of general comments.[21]

40. Several of the treaty bodies already followed the methodology endorsed by the treaty body Chairs in 2015, or have since adopted it. In 2016, the Human Rights Committee adopted the elements for the elaboration of and consultations on general comments endorsed by the twenty-seventh meeting of treaty body Chairs, noting that they did not constitute a departure from the Committee's practice.[22] The Committee on the Rights of Persons with Disabilities has endorsed the common consultation process for the adoption of general comments. In 2015, the Committee on the Elimination of Racial Discrimination and the Committee on Enforced Disappearances formally adopted the common methodology.[23] The Committee on Economic, Social and Cultural Rights applies the common consultation process methodology, although it has not formally adopted it. Similarly, the Committee against Torture has not taken a formal decision but has followed the various steps of the common process for the elaboration of general comments, as evidenced during 2017.[24]

41. The Committee on the Elimination of Discrimination against Women already applied some of the elements of the methodology prior to 2015, and after the twenty-seventh meeting of Chairs it endorsed one of the elements that it had not already incorporated into its practices: that it would publish a note describing the consultation process for general comments. It has also indicated that it would consider other elements of the methodology — namely that it would share draft general comments with other treaty bodies for input, comments or feedback, and would take input, comments or feedback from States parties, other treaty bodies, national human rights institutions and civil society organizations into consideration. It agreed that advance versions of draft general comments could be posted on the OHCHR website, but on the understanding that the timing of the posting would be decided by the relevant working group of the Committee.[25]

42. Most treaty bodies post calls for submissions on draft general comments on their websites, along with deadlines for input, indications for stakeholders who wish to participate, and the texts of the submissions, which remain available after a general comment has been adopted.[26]

43. The Chairs could discuss the visibility of the consultation processes for the elaboration of general comments, including how to make the process and outcome publicly accessible through their respective websites, by including in a "general comments" section the general procedure for elaboration, consultation and adoption of general comments and a list of adopted general comments and the texts of submissions.

[21] A/70/302, para. 25.
[22] A/72/40.
[23] A/71/18, para. 58, and A/71/56.
[24] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11.
[25] Decision 61/3.
[26] See www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2017.aspx.

VI. Engagement with national human rights institutions

44. Across the treaty body system, a number of rules of procedure, working methods and practices relating to engagement and sharing of experience between national human rights institutions and the treaty bodies have developed over the years.[27]

45. The Optional Protocol to the Convention against Torture (arts. 11 (c) and 18 (4))[28] and the Convention on the Rights of Persons with Disabilities (art. 33) include direct references to national human rights institutions. When establishing national preventive mechanisms under the Optional Protocol to the Convention against Torture, States parties are to give due consideration to the Paris Principles. The Subcommittee on Prevention of Torture thus systematically engages with such institutions, especially when they include national preventive mechanism functions. During visits, the Subcommittee interacts with such institutions, including through undertaking joint visits to places of deprivation of liberty.

46. All treaty bodies allow national human rights institutions to participate in most aspects of their work, including by submitting written information and attending public and/or closed briefings with treaty body members. The Human Rights Committee and the Committee against Torture recognize the contribution of national human rights institutions at all stages of the reporting process, noting that this includes providing information for the preparation of the list of issues (as well as lists of issues prior to reporting) and with regard to follow-up to concluding observations, as well as submitting alternative reports in cases where the committee is examining a State in the absence of a report. The Human Rights Committee offers national human rights institutions the possibility of addressing the Committee in formal private and closed meetings with interpretation.[29]

47. The Committee against Torture gives national human rights institutions the possibility of meeting with it in private plenary. The Human Rights Committee, the Committee against Torture and the Committee on Enforced Disappearances refer to the use of new communications technologies, such as videoconferencing and webcasting, to facilitate the participation of national human rights institutions in their work. Some committees, such as the Human Rights Committee, the Committee on Migrant Workers and the Committee on Enforced Disappearances, stipulate that national human rights institutions can participate in the preparation of general comments and days of general discussion. The Committee on the Elimination of Discrimination against Women and the Committee on Enforced Disappearances note that national human rights institutions may assist alleged victims of human rights violations with submitting individual communications. The Committee on the Elimination of Racial Discrimination gives representatives of national human rights institutions the opportunity to take the floor at the beginning of the dialogue with the State party, while the Committee on the Rights of Persons with Disabilities permits them to do so at both the beginning and the end of the dialogue. It is not clear whether the treaty bodies that are silent on points such as participation in days of general discussion or assistance with preparing an individual communication allow or disallow the participation of national human rights institutions in those aspects of their work.

48. Committees vary not only in their practices regarding participation by national human rights institutions, but also in their choice of document in which they communicate these practices. The rules of procedure of the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances indicate how national human rights institutions can engage in different stages of the committee's work. The Committee on Economic, Social and Cultural Rights adopted, in 1998, a general comment on the role of such institutions in the protection of economic, social and cultural rights and has regularly engaged with th institutions.

[27] HRI/MC/2017/3, para. 3.
[28] HRI/MC/2017/3, paras. 45–47.
[29] CCPR/C/106/3.

49. The Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Committee on the Rights of the Child set out guidance for interactions with national human rights institutions in their working methods. The Human Rights Committee details its relations with national human rights institutions in a 2012 paper available on the Committee's website. The Committee on the Rights of the Child refers in a general comment to how national human rights institutions may participate in its work, while the Committee on the Elimination of Discrimination against Women, the Committee on Migrant Workers and the Committee on Enforced Disappearances do so in a statement. While the Committee against Torture provides some indications in its working methods, most of the detail is in its annual report. The Committee on Enforced Disappearances provides detailed indications of the different levels of participation of national human rights institutions in its work in a specific document on the relationship between the Committee and national human rights institutions.[30]

50. The Chairs could discuss ways and means to ensure the implementation of the common treaty body approach to engagement with national human rights institutions as endorsed at their twenty-ninth meeting.[31] They could also discuss further alignment of their working methods regarding how information on such interaction is made available publicly.

VII. Implementation of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines)

51. The General Assembly in its resolution 68/268 reaffirms the importance of the independence and impartiality of members of the treaty bodies and underlines the importance of all stakeholders respecting it fully. The Assembly notes the adoption, at the twenty-fourth annual meeting of the Chairs of the treaty bodies, in 2012, of the Addis Ababa guidelines, and encourages the treaty bodies to implement the guidelines (paras. 35–37).

52. A key feature of the treaty bodies is the independence of their members. Different elements come into play when ensuring treaty body members' independence, including their nationality, profession and affiliation, their security of tenure as a committee member and their role in considering reports or communications relating to their country (or countries) of nationality.

53. All the committees acknowledge the elements necessary for independence and impartiality in some way in their rules of procedure and/or working methods, albeit in terms that vary slightly between the committees. In this vein, in 2012 the Chairs of the treaty bodies endorsed the Addis Ababa guidelines.[32] These identify a broad range of issues relating to committee members' independence and make concrete recommendations in this regard. Several treaty bodies have already incorporated the Addis Ababa guidelines into their rules of procedure.

54. At their twenty-ninth meeting, the Chairs reiterated that States should refrain from nominating or electing persons to the treaty bodies whose independence and impartiality is compromised by the nature of their affiliation with the executive branch of the State. Members should avoid functions or activities that could be seen as incompatible with their obligations and responsibilities.[33]

55. The Committee on the Rights of Persons with Disabilities adopted the Addis Ababa guidelines in 2012, specifying that the guidelines were an integral part of its rules of

[30] CED/C/6.
[31] A/72/177, paras. 46–50.
[32] HRI/MC/2015/6.
[33] A/72/177, paras. 38–40.

procedure;[34] the Committee on the Rights of the Child adopted the guidelines in 2015, amending the relevant rule.[35] The rules of procedure of the Committee against Torture now also incorporate the guidelines. Those of the Committee on Migrant Workers do as well, with some additions.[36] The Committee on Economic, Social and Cultural Rights adopted a decision in this respect, building on its rules of procedure and in the spirit of the Addis Ababa guidelines.[37]

56. The Chairs could discuss ways and means to ensure the full operationalization of the Addis Ababa guidelines.

VIII. Inquiry procedures

57. Some of the treaty bodies carry out the inquiries provided for by the relevant treaties. These permit confidential visits to States parties where there is evidence of serious, grave or systematic human rights violations. The following committees may undertake confidential inquiries: the Committee on Economic, Social and Cultural Rights (art. 11 of the Optional Protocol to the Covenant),[38] the Committee against Torture (art. 20 of the Convention), the Committee on the Rights of the Child (art. 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure), the Committee on the Elimination of Discrimination against Women (art. 8 of the Optional Protocol to the Convention) and the Committee on the Rights of Persons with Disabilities (art. 6 of the Optional Protocol to the Convention). Two other committees can also carry out country visits: the Subcommittee on Prevention of Torture (art. 11 of the Optional Protocol to the Convention against Torture) and the Committee on Enforced Disappearances (art. 33 of the Convention). The Subcommittee visits do not require authorization from States parties as they undertake to receive the Subcommittee in their territory and grant it access to places of deprivation of liberty (art. 12 of the Optional Protocol to the Convention against Torture).

58. While sharing common features, treaty bodies' practices relating to inquiry procedures and visits differ slightly. The High Commissioner, in her 2012 report on the strengthening of the human rights treaty bodies, noted that a common approach to inquiry procedures would greatly assist treaty bodies, States parties and other actors in effectively dealing with the sensitive issues arising from them, as well as ensuring continued consistency and legal certainty in the handling by treaty bodies of procedural issues related to inquiries.[39] The 2012 report expressed the desirability of a review of these practices, to assist the treaty bodies in their preparation of draft common written guidelines to establish common procedures for the treaty bodies with an inquiry procedure.[40]

59. The treaty body Chairs at their 2016 meeting exchanged experiences and practices in the area of inquiries, paying particular attention to issues around confidentiality.[41] At their 2017 meeting, the Chairs continued their exchange of views on this topic, and decided to further pursue that dialogue in order to promote increased alignment of the working methods of those treaty bodies with a mandate to conduct inquiries. They considered that it would help the alignment in relation to inquiry procedures if all treaty bodies undertaking country visits participated in this process, including the Subcommittee on Prevention of Torture.[42] At least two of the treaty bodies — the Committee on the Elimination of Discrimination against Women and the Committee against Torture — have adopted

[34] Rules 60 and 96.
[35] Rule 11 bis.
[36] Decision of 18 April 2016, twenty-fourth session.
[37] E/2015/22-E/C.12/2014/3, annex III.
[38] This applies to States that have made a declaration regarding article 11 and not to all States parties to the Optional Protocol.
[39] A/66/860.
[40] Ibid., pp. 69–70.
[41] A/71/270, paras. 38–39.
[42] A/72/177, para. 52.

guidelines relating to the procedures for inquiries but neither appear to be publicly available.

60. A two-day workshop on inquiries was convened by the Treaty Bodies Branch of OHCHR, in cooperation with the Geneva Academy of International Humanitarian Law and Human Rights, on 4 and 5 October 2016. The Chairs will discuss the summary of the discussions and recommendations made during that workshop at the current meeting.[43]

61. Several aspects of the inquiry and country visit-related practices of the seven treaty bodies mentioned above are compared below, namely (a) the threshold for patterns of grave and systematic violations for the launching of an inquiry or for requesting a country visit; (b) the application of confidentiality rules in inquiry processes and country visits, and subsequent publication of information on these; (c) the modalities for interaction with organizations that submit information; and (d) provisions for follow-up.

Threshold to trigger an inquiry

62. The treaties that permit inquiry procedures and country visits provide that if the committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the treaty that it monitors, it may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. The committees' rules of procedure set out more specifics about the process for triggering an inquiry.[44] Most provide for a similar approach to preliminary consideration of information, specifying that the committee may ascertain the reliability of the information and/or the sources of the information brought to its attention under the article that provides for an inquiry, and that it may seek to obtain additional relevant information substantiating the facts of the situation. Based on this, the committee shall determine whether the information received contains reliable information indicating serious violations of the provisions of the relevant convention by the State party concerned.

63. The rules of procedure of the Committee against Torture differ slightly from the others in stating that, to embark on the next step, which is to contact the State concerned, the information must appear to the Committee to be reliable and contain well-founded indications that torture is being practised. Other committees' rules provide that the committee in question must be satisfied that the information received is reliable and indicates grave or systematic violations of the relevant rights. The rules of the Committee against Torture also differ in that they specify that the Committee shall invite the State party concerned to cooperate in its examination of the information and, to this end, to submit observations with regard to that information, and that the Committee shall indicate a time limit for the submission of observations by the State party concerned, with a view to avoiding undue delay in its proceedings. The other committees' rules simply say that the committee shall invite the State party to submit observations within fixed time limits. Treaty bodies have tended to request States to reply within two months, extending the deadline on occasion.[45]

64. Despite their slight differences, all the relevant rules of procedure leave it to the committees to judge, based on the information they seek and receive, whether an inquiry is warranted. Similarly, the treaties and the rules of procedure leave it to the committees to decide whether a visit to the State party where violations are alleged to be occurring is warranted.

[43] The summary will be available at www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/MeetingChairpersons.aspx.

[44] The Committee against Torture and the Committee on Enforced Disappearances are the only two treaty bodies whose working methods refer to inquiries, albeit succinctly and in addition to the details provided in the rules of procedure, similarly to the other treaty bodies that can carry out inquiries or country visits.

[45] A/70/38, para. 33.

Confidentiality

65. One of the fundamental characteristics of the treaty body inquiry procedures is their confidentiality. This principle is affirmed in the treaties themselves and is reiterated in the rules of procedure, such as those of the Committee on the Elimination of Discrimination against Women.

66. However, as pointed out by the treaty body Chairs during their 2016 annual meeting, it is difficult to maintain confidentiality concerning the decision to initiate an inquiry, as such inquiries tend to be visible and attract publicity. The Chairs broadly agreed that while all treaty bodies should maintain absolute confidentiality throughout the proceedings, public disclosure of the treaty body's findings, in some form and at the end of the inquiry proceedings (after the dialogue with States), was essential in order to ensure a victim-oriented approach.[46]

67. The Committee on the Elimination of Discrimination against Women has adopted this approach, through its 2014 decision to make public and publish on the OHCHR website the full report of inquiries, including the Committee's findings, comments and recommendations.[47]

68. Most of the treaty bodies provide that on completion of the inquiry proceedings they may decide, after consultation with the State party concerned, to include a summary account of the results of the proceedings in their annual report — as does the Committee on Economic, Social and Cultural Rights[48] — or, if agreed with the State party, to make public the full text of the report.

69. The Subcommittee on Prevention of Torture has noted, though, that publication of its visit reports reflects the spirit of transparency on which preventive visiting is based and allows for better implementation of the respective recommendations, and it therefore encourages report recipients to authorize their publication.[49]

Sources of information

70. The committees differ in their level of specification of where the committee concerned may seek information from. The rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure provide that the Committee may decide to obtain additional information, inter alia, from eight different sources. Other committees' rules of procedure are less broad: those of the Committee on the Rights of Persons with Disabilities stipulate that the Committee shall take into account any other relevant information, adding that it may decide to obtain additional information from six different sources. Those of the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women are similar, except that they list six and four different sources respectively. The rules of procedure for the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances, and those under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, specify that the committee shall decide the form and manner in which such additional information will be obtained.

71. The committees' rules of procedure allow them to hold hearings during country visits; most specify that this is to determine facts or issues relevant to the inquiry. The rules also indicate the need for States parties to provide guarantees regarding the hearings, notably to ensure that no obstacles are placed in the way of witnesses and other individuals wishing to meet with the designated members of the Committee and that no retaliatory measure is taken against those individuals or their families.

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[46] A/71/270, paras. 38–39.

[47] A/70/38, annex I, decision 59/VII.

[48] Optional Protocol to the Covenant, art. 11 (7); and E/C.12/49/3, rule 25.

[49] CAT/C/60/3, para. 20.

Follow-up to inquiries

72. The treaties and the rules of procedures provide for the committees to follow up with the State party on the measures it has taken in response to an inquiry. This might involve including information on the measures taken in the State party's next report to the committee concerned, as is the case of the Committee on Economic, Social and Cultural Rights. The Committee against Torture is the only committee whose rules of procedure do not explicitly provide for follow-up, though the Committee does carry out such activities.[50] In 2015, the Committee adopted internal guidelines on practical modalities and criteria for deciding on follow-up visits to inquiry missions.[51]

73. The Chairs could discuss ways and means to ensure effective alignment of working methods concerning inquiries and country visits, including whether treaty bodies with this mandate reiterate in their guidelines the desirability of publishing the full reports of inquiries and country visits, when possible, or a summary account, and encourage States parties to agree to such publication. The Chairs could also discuss how best to uphold their freedom to seek information from a wide diversity of sources, as well as specific measures to ensure confidentiality of witnesses' testimonies or other protections if necessary.

IX. Reprisals

74. The General Assembly in its resolution 68/268 strongly condemned all acts of intimidation and reprisals against individuals and groups who contribute to the work of the treaty bodies, and urged States to take all appropriate action to prevent and eliminate such human rights violations (para. 8).

75. Several human rights treaties recognize the risk of intimidation or reprisals that human rights defenders face and require States parties to protect against such intimidation or reprisals.[52]

76. Several of the treaty bodies' rules of procedure note the need to take such measures, although usually only referring to people who interact with the treaty body during an inquiry or who submit a communication to it. The rules of procedure of the Committee on Enforced Disappearances, for instance, specify that where the Committee receives reliable information that a State party has been implicated in reprisals against individuals under its jurisdiction as a consequence of providing information or participating in any hearings or meetings in connection with a visit, it may request the State party concerned to adopt urgently measures to ensure protection of the individuals concerned and submit written explanations or clarifications thereon to the Committee.[53] Only the Committee on the Rights of the Child and the Committee on Enforced Disappearances provide, in their working methods, for action to counter reprisals, but with little detail of what they would do or how they would go about it.

77. The Committee against Torture was, in 2012, the first treaty body to adopt a mechanism to prevent, monitor and follow up on cases of reprisal against civil society organizations, human rights defenders, victims and witnesses after their engagement with the treaty body system. It has taken action in a number of cases since then, and has also adopted guidelines on the receipt and handling of allegations of reprisal against individuals and organizations cooperating with it. It has a dedicated section of its website on reprisals, from where it is easy to find all its communications with States parties concerning allegations of reprisal.

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[50] A/71/44.

[51] Ibid.

[52] See, for instance, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 8; or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 16.

[53] Rule 99. See also E/C.12/49/3, rule 20.

78. In 2015, the Subcommittee on the Prevention of Torture adopted a public policy on reprisals;[54] a rapporteur on reprisals was appointed and each Subcommittee visit has a focal point in charge of the implementation of the Subcommittee policy. In case of risks, allegations or occurrence of reprisals, the Subcommittee directly engages with the respective State party to ensure that it prevents, refrains from engaging in, and adopts adequate remedies for such acts of intimidation or reprisals against individuals and/or groups seeking to cooperate or cooperating with the Subcommittee.

79. The Committee on Enforced Disappearances is also active on the matter, publishing each year in its annual report a summary of actions taken following allegations of reprisal, naming the States in question.[55] It also takes other initiatives to address the risk of reprisals, such as media communications. In 2016, on the International Day of the Victims of Enforced Disappearances, it issued a press release jointly with the Working Group on Enforced or Involuntary Disappearances, expressing concern at allegations of intimidation and reprisals against victims of enforced disappearance and those who reported their cases.[56]

80. In her 2012 report, the High Commissioner for Human Rights proposed that each treaty body appoint a focal point among its membership to draw attention to cases of reprisal, ensure mechanisms for action and facilitate access for civil society organizations and national human rights institutions with knowledge on such cases. This would safeguard interactions of civil society and national human rights institutions with the treaty bodies and would ensure protection in cases of reprisals against human rights defenders after engagement with the treaty body system.[57]

81. In 2014, the Chairs of the treaty bodies decided to make the question a standing item of the agenda of their annual meeting.[58] They have consistently recommended that all treaty bodies establish a focal point on reprisals and, stressing the importance of a system-wide approach across all human rights mechanisms to addressing reprisals, they adopted in 2015 a joint policy: the Guidelines against Intimidation or Reprisals (San José Guidelines).[59] Since then, the Chairs have called for the condemnation of reprisals to be translated into practice through endorsement of the San José Guidelines, and have encouraged each treaty body to adopt them.[60] In 2017, the Chairs reiterated their recommendation for each treaty body's rapporteur(s) or focal point(s) on reprisals to work together to align the approaches taken to prevent intimidation and protect individuals and groups against reprisals, in order to enhance consistency across the treaty body system.

82. By early 2018, the San José Guidelines had been adopted or endorsed by 8 out of 10 treaty bodies, which had appointed dedicated rapporteurs, focal points or working groups on reprisals and intimidation. The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have not adopted the Guidelines.

83. The Committee on Economic, Social and Cultural Rights has a focal point on reprisals, and in 2016 adopted a statement on human rights defenders and economic, social and cultural rights, which addresses the question of reprisals.[61] The Committee on the Elimination of Discrimination against Women has taken note of the San José Guidelines, and has a focal point on intimidation or reprisals — its Bureau — which can also act intersessionally. The Bureau determines, by consensus and in consultation with the plenary, the appropriate course of action to be taken in response to substantiated allegations of intimidation or reprisal against individuals or groups for seeking to cooperate or cooperating with it. It has stated that it will consider the San José Guidelines further, with a

[54] CAT/OP/6/Rev.1; see also Optional Protocol to the Convention against Torture, art. 15.

[55] A/71/56.

[56] Ibid.

[57] See www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf, p. 67.

[58] A/69/285.

[59] HRI/MC/2015/6; regarding their adoption, see A/71/270.

[60] A/70/302.

[61] E/C.12/2016/2.

view to adapting and developing them to best reflect its particular context, mandate and experience.[62]

84. Most treaty bodies have not communicated widely how they handle allegations of reprisal or what human rights defenders can expect by way of protection and support if at risk of intimidation or reprisals.

85. The Chairs could discuss effective ways and means to ensure alignment of working methods of the treaty bodies with respect to reprisals, including by, inter alia, inviting them to add a standing item on their agenda to consider the issue, and asking States parties, both in writing and during dialogues, where there have been alleged acts of intimidation or reprisal, to describe the measures taken to address such allegations. The Chairs could also discuss further operationalization of the San José Guidelines, improved coordination and communication about treaty body action in this area.

X. Remedies

86. In her 2012 report,[63] the United Nations High Commissioner for Human Rights noted the value of including, in treaty bodies' final decisions on the merits of individual cases, specific and targeted remedies for the victim in question, and also general recommendations, such as changes in law or practice, in order to ensure non-repetition of similar violations in the future. She called for remedies to be framed, to the extent possible, in a way that allowed their implementation to be measured. That could include compensation, rehabilitation, satisfaction, restitution and guarantees of non-repetition; stipulation of other forms of satisfaction, including legislative and institutional reforms or other measures as appropriate; and, where relevant, clarification of the obligation to investigate and prosecute. She suggested that proposed remedies be structured around short- and long-term goals, specifying concrete steps to be taken by States.

87. The Chairs of the treaty bodies, at their annual meeting in 2016, discussed remedies in the context of individual communications and reported on the treaty bodies' respective jurisprudence, which showed divergence both in the terminology used and the measures recommended by the treaty bodies. They agreed that there was a need to compare the jurisprudence of the respective treaty bodies, with the objective of distilling good practices and establishing the full range of remedies that could guide the treaty bodies in their decisions.[64] At their annual meeting in 2017, the Chairs continued their exchange of views on the topic and decided to identify common elements with respect to practices in the area of remedies, so as to enhance the alignment of those practices across the different treaty bodies.

88. Upon finding a violation, all committees dealing with individual communications recommend various types of remedy to redress human rights violations, the most common being compensation. The committees may also recommend release, investigation, retrial, apology, or amendments to legislation, among other options. Most committees now set out recommendations relating to the victim, including on compensation, as well as more general recommendations to prevent and rectify the violation. This is the case for the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances.[65] As the Committee on Economic, Social and Cultural Rights recently noted, when a violation of a right under the International Covenant on Economic, Social and Cultural Rights is found, the recommendations to the State party might also be general when that is necessary as a guarantee of non-repetition.[66]

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[62] A/71/38, decision 61/II.
[63] A/66/860.
[64] A/71/270, paras. 35–37.
[65] HRI/MC/2017/4, para. 53.
[66] E/2018/22-E/C.12/2017/3.

89. The Committee on the Elimination of Racial Discrimination and the Committee against Torture tend to limit their recommendations to remedies for the victim, although the practices of the Committee against Torture in this area are gradually evolving. Some committees, such as the Committee on the Elimination of Discrimination against Women, often set out detailed recommendations even regarding the general recommendations to prevent future similar violations from occurring.[67] The recommendations of the Human Rights Committee and the Committee against Torture tend to be less detailed and refer more broadly to the provision of an adequate or an effective remedy. The Committee against Torture tends to refer less frequently than other treaty bodies to the obligation to make full reparation to the victim.

90. The Chairs could discuss effective ways and means to align working methods and practices regarding remedies, including on terminology used and measures recommended.

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[67] See the range of legislative changes proposed in *O.G. v. Russian Federation* (CEDAW/C/68/D/91/2015), para. 9. See also the brief reference to legislative change in *G. v. Australia* (CCPR/C/119/D/2172/2012), para. 9.